

REMARKS

This is a reply to the Office Action mailed October 28, 2003, with a shortened statutory response period of three (3) months from the mailing date, extended two months by Petition filed herewith. The Commissioner is hereby authorized to charge any additional fees to Deposit Account number 02-1818.

Claims 1-99 are presently pending in the application and stand rejected. Applicants respectfully traverse the rejections of these claims.

I. Double Patenting Rejection

The Examiner has provisionally rejected claims 1-99 under the judicially created doctrine of obviousness-type double patenting as claiming the same invention as that of claims 1-99 of U.S. Patent No. 6,607,784. Applicants submit that all claims have been amended to add the step of producing high shear mixing or heat to a presuspension. Accordingly, Applicants respectfully request a withdrawal of this rejection under 35 USC § 101.

II. Rejections Under 35 U.S.C. §102

The Examiner has rejected claims 1-5, 9, 10, 16-19, 23-31, 35, 54-57, 61, 62, 69, 71-74, 78-82, and 86 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,133,908 ("*Stainmesse*"). Applicants respectfully traverse these rejections.

There is no disclosure in *Stainmesse* of using high shear mixing or heat as is required in all of the rejected claims. Thus, *Stainmesse* does not anticipate these claims and Applicants respectfully request a withdrawal of these rejections.

III. Rejections Under 35 U.S.C. §103

The Examiner has rejected claims 1-10, 16-42, 44-51, 53-62, 67-93, and 95-99 under 35 USC §103(a) in view of *Stainmesse*. Applicants respectfully traverse this rejection.

There is no disclosure in *Stainmesse* of using high shear mixing or heat to process the particles of its method as is required by all rejected claims of the present application. Accordingly, the Examiner has failed to present a prima facie case of obviousness.

Accordingly, Applicants respectfully submit the pending claims are non-obvious, and patentable in view of *Stainmesse*.

Applicants have amended the specification to properly include "glyceryl esters" in the group of nonionic surfactants instead of in the group of anionic surfactants, and have also amended claims 3-4, 17-18, 25-26, 29-30, 40-41, 49-50, 72-73, 80-81, and 91-92 to reflect said amendment. Additionally, Applicants have amended claim 26 to recite the "fourth surface modifier is a anionic surfactant selected from the group consisting of potassium laurate, triethanolamine stearate, sodium lauryl sulfate, sodium dodecylsulfate, alkyl polyoxyethylene sulfates, sodium alginate, dioctyl sodium sulfosuccinate, phosphatidyl glycerol, phosphatidyl inositol, phosphatidylserine, phosphatidic acid and their salts, sodium carboxymethylcellulose, bile acids and their salts and calcium carboxymethylcellulose" replacing the original claims language which was duplicative of claim 25.

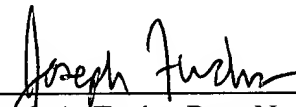
In view of the foregoing Amendments and Remarks, Applicants respectfully submit that Claims 1-99 are in condition for allowance and respectfully request early notice of the same.

Respectfully submitted,

BELL, BOYD & LLOYD LLC

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BY



Joseph A. Fuchs, Reg. No. 34,604
P.O. Box 1135
Chicago, Illinois 60690-1135
Phone: (312) 807-4335